

CITY COUNCIL REPORT



Meeting Date: November 12, 2013
 General Plan Element: ***Public Services and Facilities***
 General Plan Goal: ***Meet or surpass all applicable water quality standards for domestic, commercial, and industrial uses***

ACTION

Construction Manager at Risk Contract in the Amount of \$147,221 for design phase services for Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects. Adopt Resolution No. 9552 authorizing construction manager at risk Contract 2013-175-COS in the amount of \$147,221 with MGC Contractors Inc. for design phase services for Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects. Also authorize budget transfers totaling \$5,000,000 from CIP project W9903 Booster Station Upgrades (\$3,100,000) and from CIP project W4708 Well Sites (\$1,900,000) to a newly created CIP project titled Site 71 Well Site and Water Booster Station.

BACKGROUND

The purpose of this action is to authorize construction manager at risk design phase services for the Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects. This project will replace facilities that are reaching the end of their useful service lives.

Site 71 Well and Booster Pump Station is located on a City owned parcel of land at the southeast corner of Miller and Thomas Roads. The property is primarily occupied by former Fire Station No. 1 which is now being used by Professional Medical Transport (PMT) Ambulance for ambulance staging. The northwest corner of the property features existing Well 71 and Booster Pump Station 71. The project will design a new well site and booster pump station and will include landscape and architectural improvements. The proposed well is a replacement for the original on-site well constructed in 1959, and is an integral component of the North Indian Bend Wash (NIBW) Superfund remedy.

Booster Pump Station 42B is located northwest of the Pima Road and Jomax Road intersection. The project will design new electrical and mechanical improvements within the existing booster pump station facility.

ANALYSIS & ASSESSMENT

Recent Staff Action

Action Taken _____

Staff prepared and publicly advertised a Request for Qualifications (RFQ) for a CMAR to provide design & construction phase services for Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects. Seven responses were received by the deadline of September 10, 2013. A panel of 5 city staff members and a representative of an independent contractor evaluated the responses and shortlisted three teams for interview.

Following interviews, MGC Contractors Inc. was selected by the Panel as the CMAR for these two projects. The attached matrix indicated the Selection Panel's rankings.

Significant Issues to be Addressed

Key issues to be addressed on the Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B projects include: phasing of construction to improvements to minimize disruption to businesses and residents at a reasonable cost to the City, coordination with private utility companies, and development of a guaranteed maximum price for construction phase services.

Community Involvement

Public outreach and community involvement, including coordination with the adjacent property owners, is ongoing and will continue as the project moves forward to the construction phase. A public meeting was held June 24, 2013, to present the proposed construction project to the public prior to commencement of detailed design.

RESOURCE IMPACTS

Available funding

\$3,100,000 is available in CIP Project W9903 Booster Station Upgrades and \$1,900,000 is available in CIP Project W4708 Well Sites to fund the requested budget transfers and the newly created project, for design services and construction costs.

Staffing, Workload Impact

The contract administrator responsible for enforcing all contract provisions will be Anna Leyva, Project Manager, Capital Project Management Department.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution 9552 authorizing construction manager at risk Contract 2013-175-COS in the amount of \$147,221 with MGC Contractors Inc. for design phase services for Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B projects. Also authorize budget transfers totaling \$5,000,000 from CIP project W9903 Booster Station Upgrades (\$3,100,000) and from CIP project W4708 Well Sites (\$1,900,000) to a newly created CIP project titled Site 71 Well Site and Water Booster Station.

Proposed Next Steps:

**City Council Report | Engineering Services – Site 71 Well and Booster Pump Station & Water
Booster Pump Station 42B projects**

Upon Council approval, project construction is expected to start November 2013 and be complete in approximately 12 months.

RESPONSIBLE DEPARTMENT(S)

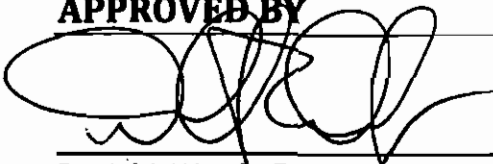
Capital Project Management, Water Resources Division, Finance and Accounting Division

STAFF CONTACTS (S)

Anna Leyva, Project Manager, ALeyva@scottsdaleaz.gov

Brian Biesemeyer, Executive Director Water Resources, BBiesemeyer@scottsdaleaz.gov

APPROVED BY

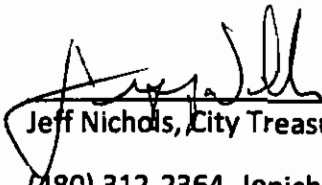


Daniel J. Worth, Executive Director, Public Works

(480) 312-5555, DWorth@scottsdaleaz.gov

10-29-13

Date



Jeff Nichols, City Treasurer

(480) 312-2364, Jenichols@scottsdaleaz.gov

10/29/13

Date

ATTACHMENTS

1. Resolution 9552
2. Location Map – Booster Pump Station 42B
3. Location Map – Site 71
4. Evaluation Matrix
5. Contract 2013-175-COS

RESOLUTION NO. 9552

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, APPROVING CONSTRUCTION MANAGER AT RISK CONTRACT NO. 2013-175-COS WITH MGC CONTRACTORS, INC. FOR PRECONSTRUCTION PHASE SERVICES FOR SITE 71 WELL AND BOOSTER PUMP STATION & WATER BOOSTER PUMP STATION 42B PROJECTS. AUTHORIZE BUDGET TRANSFERS TOTALING \$5,000,000 FROM CIP PROJECT W9903 BOOSTER STATION UPGRADES (\$3,100,000) AND FROM CIP PROJECT W4708 WELL SITES (\$1,900,000) TO A NEWLY CREATED CIP PROJECT TITLED SITE 71 WELL SITE AND WATER BOOSTER STATION.

The City wishes to replace facilities that are reaching the end of their useful service lives;
and

MGC Contractors, Inc. has offered to provide the City the requisite pre-construction phase services necessary to construct improvements to the Site 71 Well and Booster Pump Station and Water Booster Pump Station 42B Projects.

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The Mayor of the City of Scottsdale is authorized and directed to execute Construction Manager at Risk (CMAR) Contract No. 2013-175-COS with MGC Contractors, Inc. for pre-construction phase services for improvements to the Site 71 Well and Booster Pump Station and Water Booster Pump Station 42B Projects.

Section 2. A budget transfer of \$3,100,000 from CIP Project W9903 Booster Station Upgrades and a budget transfer of \$1,900,000 from CIP Project W4708 Well Sites to a newly created CIP project titled Site 71 Well Site and Water Booster Station is authorized to fund the design and construction of Site 71 Well Site and Water Booster Station.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 12th day of November, 2013.


ATTEST:

CITY OF SCOTTSDALE, an
Arizona Municipal Corporation

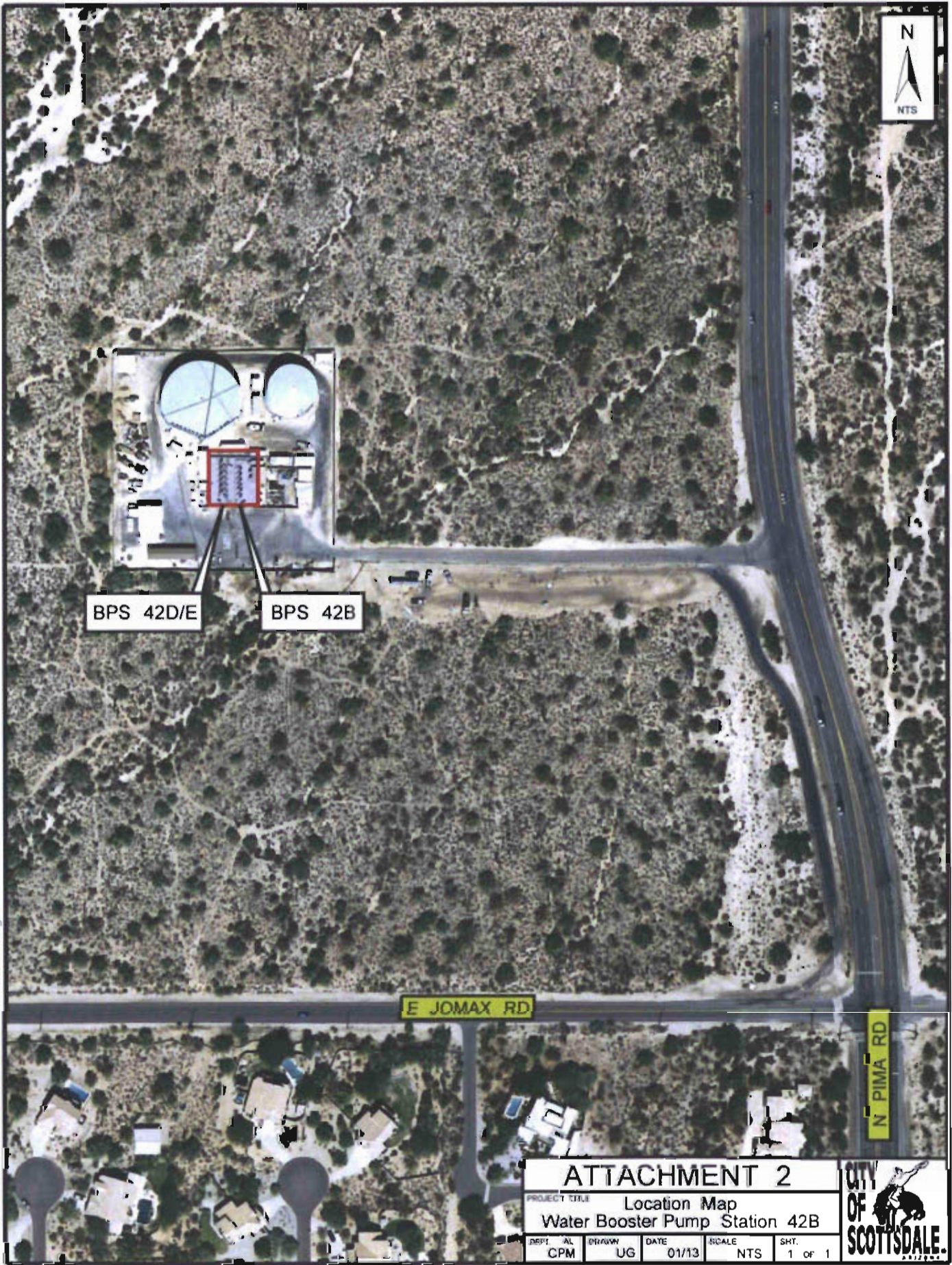
By: _____
Carolyn Jagger,
City Clerk

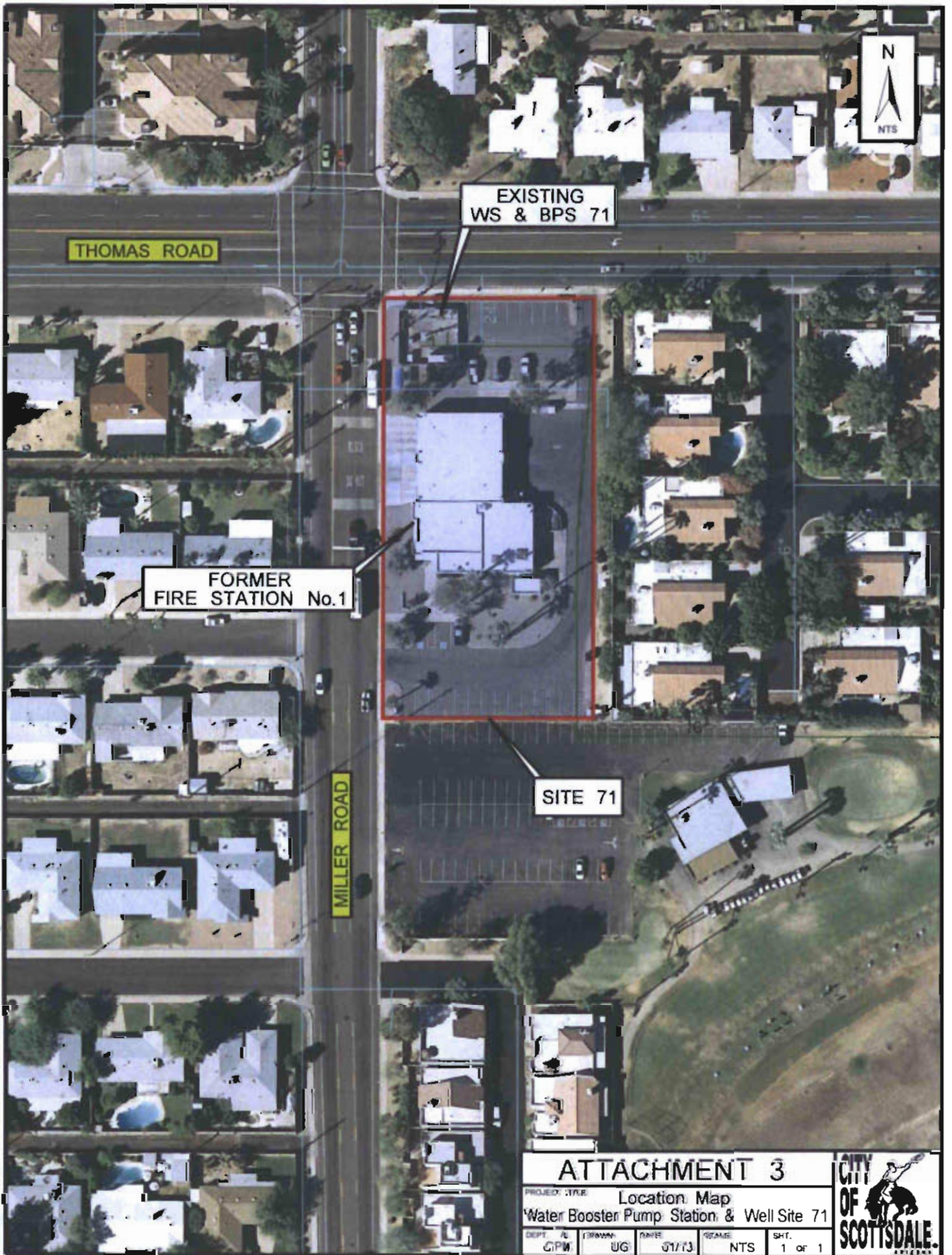
By: _____
W.J. "Jim" Lane,
Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney
By: Clifford J. Frey
Senior Assistant City Attorney





Site 71 Well and Booster Pump Station &
Water Booster Pump Station 42B Projects

Evaluation Matrix

Company	Rank
MGC Contractors, Inc.	1
PCL Construction, Inc.	2
Archer Western Construction	3



CITY OF SCOTTSDALE

CONSTRUCTION MANAGER AT RISK

PRECONSTRUCTION CONTRACT

DESIGN PHASE SERVICES

PROJECT NO. W9903 & W4708

CONTRACT NO. 2013-175-COS

ATTACHMENT 5

TABLE OF CONTENTS

RECITALS.....	1
ARTICLE 1 - BASIC DESIGN PHASE SERVICES.....	1
ARTICLE 2 - PERIOD OF SERVICES.....	13
ARTICLE 3 - CONTRACT AMOUNT AND PAYMENTS.....	13
ARTICLE 4 - CITY'S RESPONSIBILITIES.....	14
ARTICLE 5 - CONTRACT CONDITIONS.....	15
ARTICLE 6 - INSURANCE.....	25
ARTICLE 7 - FEDERAL AND STATE LAW.....	30
ARTICLE 8 - TERMS AND DEFINITIONS.....	32
EXHIBIT A SCOPE OF WORK.....	1
EXHIBIT B HOURLY RATE SCHEDULE.....	1
EXHIBIT C SUBMITTAL REQUIREMENTS FOR THE GMP.....	1

CITY OF SCOTTSDALE

**CONSTRUCTION MANAGER AT RISK
PRECONSTRUCTION CONTRACT
DESIGN PHASE SERVICES**

**PROJECT NO. W9903 & W4708
CONTRACT NO. 2013-175-COS**

THIS CONTRACT, entered into this 12th day of November, 2013, by the City of Scottsdale, an Arizona municipal corporation, (the "CITY") and MGC Contractors Inc., (the "CONSTRUCTION MANAGER AT RISK" or "CMAR").

RECITALS

- A. The Mayor of the City of Scottsdale, Arizona, is authorized by provisions of the City Charter to execute Contracts for professional services and construction services.
- B. The City intends to construct the Site 71 Well and Booster Pump Station and Water Booster Pump Station 42B projects, as described in Exhibit A attached, and referred to in this Contract as the "Project", located at 2857 N. Miller Road and 26602 N. Pima Road, respectively.
- C. To undertake the design of the Project the City has entered into a Contract with GHD, Inc., who is referred to as the "Design Professional."
- D. The City desires to enter into this Contract with the CMAR for the Preconstruction design phase services identified in this Contract. At the end of the design phase, at the City's discretion, the City may enter into a separate Construction Contract with the CMAR for construction phase services.

CONTRACT

FOR AND IN CONSIDERATION of the parties' mutual covenants and conditions, it is agreed between the City and the CMAR as follows:

ARTICLE 1 - BASIC DESIGN PHASE SERVICES

1.0 General

- A. The CMAR, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the Contract Administrator, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Scottsdale, Arizona would exercise at that time, under similar conditions. The CMAR will, at all times, perform the required services consistent with sound and generally accepted construction

PROJECT NAME: Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects

PROJECT No: W9903 & W4708

9830631V2 CMAR Des (Rev. Sept 2013)

management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the City.

- B. Initial Program Evaluation: The CMAR will provide an initial written evaluation of the City's Project with recommendations as to the consistency and appropriateness of the Project and the Project's budget. The City and the CMAR will identify an acceptable time frame by which the CMAR will provide initial program evaluation.
- C. Project Meetings: The CMAR will attend Project Team meetings which may include, but are not limited to, monthly Project management meetings, Project workshops, special Project meetings, and Construction Documents rolling reviews.
- D. The CMAR will review and comment on design phase services, in a proactive manner and consistent with the intent of the Scope of Work and the most current Drawings and Specifications. The CMAR will promptly notify the City in writing whenever the CMAR determines that any Drawings or Specifications are inappropriate for the Project or cause changes in the Scope of Work requiring an adjustment in the cost estimate, Project Schedule, Guaranteed Maximum Price (GMP) Proposals or in the Contract Time for the Work, to the extent they are established.
- E. The CMAR, when requested by the City, will attend, make presentations and participate as may be appropriate, in public or community meetings related to the Project. The CMAR will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any public agency meetings.

1.1 Construction Management Plan

- A. The CMAR will prepare a Construction Management Plan, which includes but is not limited to the CMAR's professional opinions concerning: (1) Project milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project, (2) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities, (3) alternate strategies for fast-tracking or phasing the construction, (4) the number of separate subcontracts to be awarded to Subcontractors and Suppliers for the Project construction, (5) any Intergovernmental Contracts (IGA's), (6) permitting strategy, (7) safety and training programs, (8) construction quality control, (9) a commissioning program, (10) the cost estimate and basis of the model, (11) a matrix summarizing each Project Team member's responsibilities and roles, and (12) goal compliance strategy.
- B. The CMAR will add detail to its previous version of the Construction Management Plan to keep it current throughout the design phase, so that the Construction Management Plan is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional or the

CMAR, (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way, (d) the fast-tracking, if any, of the construction, or other chosen construction delivery methods, (e) the requisite number of separate bidding documents to be advertised, (f) the status of the procurement of long-lead time equipment (if any) or materials, and (g) funding issues identified by the City.

1.2 Project Schedule

- A. The fundamental purpose of the "Project Schedule" is to identify, coordinate and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CMAR will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule is subject to City approval. The Project Schedule will be consistent with the most recent revised/updated Critical Path Method. The Project Schedule will use the Critical Path Method technique, unless required otherwise in writing by the City. The CMAR will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule will be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined. The Project Schedule's activities will directly correlate with the Schedule of Values specified in Article 1.5 (A).
- B. The CMAR will include and integrate in the Project Schedule the services and activities required of the City, the Design Professional and the CMAR including all construction phase activities based on the input received from the City and the Design Professional. The Project Schedule will detail activities to the extent required to show: (1) the coordination between conceptual design and various design phase documents, (2) separate long-lead procurements, if any, (3) permitting issues, (4) land and right-of-way acquisition, if any, (5) bid packaging strategy and awards to Subcontractors and Suppliers, (6) major stages of construction, (7) start-up and commissioning, and (8) City's acceptance of the completed Work. The Project Schedule will include, by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, total float for all activities, relationships between the activities, the City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.
- C. The Project Schedule will be updated and maintained by the CMAR throughout this Contract to assure that the schedule will not require major changes at the start of the construction phase to incorporate the CMAR's plan for the performance of the construction phase Work. The CMAR will provide updates or

revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CMAR will include with these submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

1. Project Phasing (Optional): At the City's direction the CMAR will review the design and make recommendations for phased construction. If phased construction is considered appropriate and the City and Design Professional approve, the CMAR will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work. The CMAR will take into consideration factors such as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other pertinent factors.

1.3 Design Document Reviews

- A. The CMAR will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals or the Project Schedule.
- B. The CMAR will recommend, with City approval, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CMAR to construct the Project.
- C. The CMAR will meet with the Project Team as required to review designs during their development. The CMAR will familiarize itself with the evolving documents through the various design phases. The CMAR will proactively advise the Project Team and make recommendations on factors related to construction costs and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems and labor and material availability. The CMAR will also advise the Project Team on proposed Site Improvements, excavation and foundation considerations as well as concerns that exist with respect to coordination of the Drawings and Specifications. The CMAR will recommend cost effective alternatives.
- D. The CMAR will routinely conduct constructability and bidability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of the Work of Subcontractors and Suppliers.
 1. Constructability Reviews: The CMAR will evaluate whether: (a) the Drawings and Specifications are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Drawings and Specifications, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under

adverse weather conditions, (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable, and (g) the design has taken into consideration, efficiency issues concerning: access and entrance to the Site, lay down and storage of materials, staging of Site facilities, construction parking, and other similar pertinent issues.

2. Bidability Reviews: The CMAR will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing Site conditions.
 3. The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the City, the CMAR will meet with the City and Design Professional to discuss any findings and review reports.
 4. The CMAR's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CMAR.
- E. Notification of Variance or Deficiency: It is the CMAR's responsibility to assist the Design Professional in ascertaining that, in the CMAR's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CMAR recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and the City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- F. Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles, any alternate systems, approaches, or design changes that have the potential to reduce Project costs while still delivering a quality and functional product. Throughout this Contract and upon the City's instruction the CMAR will provide value engineering at various stages throughout the Project. The Project Team, with approval by the City, will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CMAR will include the cost of the alternatives into the cost estimate and any GMP Proposals.

1.4 Cost Estimates

- A. The CMAR will provide a Schedule of Values acceptable to the City including a detailed cost estimate and written review of the documents within 14 days after the CMAR's receipt of the documents required for the various phases of design. The Design Professional and the CMAR will reconcile any disagreements on the estimate to arrive at an agreed cost. If no consensus is reached, the City will make the final determination.
- B. If any estimate submitted to the City exceeds previously accepted estimates or the City's Project budget, the CMAR will make appropriate recommendations on methods and materials to the City and the Design Professional that he believes will bring the Project back into the Project budget. Major milestones on the Project include 30%, 60%, 90% submittals consistent with the City of Scottsdale's Design Standards and Policies Manual.
- C. In between these milestone estimates, the CMAR will periodically provide a tracking report, which identifies the upward or downward movements of costs due to value engineering or scope changes. It will be the responsibility of the CMAR to keep the City and the Design Professional informed as to the major trend changes in costs relative to the City's budget.
- D. If requested by the City, the CMAR will prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the City in the financing process.

1.5 Guaranteed Maximum Price (GMP)

- A. At the end of the design phase or at a time determined by the City, the City will request the CMAR to provide a GMP, or series of GMP's if the CMAR determines phased construction would be in the City's best interest. The approved form of GMP(s) is stated in Exhibit C, attached and by reference made a part of this Contract.
 - 1. The CMAR guarantees to bring the completion of the construction of the Project within the GMP or the CMAR alone will be required to pay the difference between the actual cost and the GMP.
 - 2. Any savings realized during construction may be incorporated into the construction of the Project to fund additional scope items or will be returned to the City upon the City's request.
- B. The GMP is composed of the following not-to-exceed cost reimbursable or lump sum amounts defined below:
 - 1. The Cost of the Work is a negotiated cost and is a not-to-exceed amount defined by the individual work items and their associated negotiated unit prices.

2. The General Conditions Costs are firm fixed lump sum amounts, which will include, Permit Fees, bonds and insurance premiums based on the full contract price for construction. The Construction Fee is a firm fixed lump sum or fixed percentage to be applied to the Cost of Work and General Conditions.
3. Taxes are considered to include all sales, use, consumer, and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are a not-to-exceed reimbursable amount.

The successful CMAR must secure and maintain, during the life of the Contract, State of Arizona and City of Scottsdale Transaction Privilege (sales) Tax Licenses.

To obtain a State of Arizona Privilege (Sales) Tax License Application, please go to the following website:

http://www.revenue.state.az.us/ADOR_Forms/70-79/74-4002_fillable.pdf

To obtain a City of Scottsdale Transaction (Sales) Tax License Application, please go to the following website:

<http://www.scottsdaleaz.gov/taxes/salestax.asp>

Bonds and Insurance are fixed percentages that will be applied to Cost, GC's and Construction Fee as detailed in the GMP Proposal.

Indirect Costs include CMAR contractor management costs such as CMAR staff, office space, phones, copiers, faxes, etc. and general requirements such as sweeping, temporary fencing and inspections.

- C. The City's Project Contingency is to be used at the sole discretion of the City to cover any increases in Project costs that result from City directed changes or unforeseen Site conditions. The City's Project Contingency will be added to the GMP amount provided by the CMAR, the sum of which will be the full contract price for construction. Markups for the Construction Fee and taxes will be applied by the CMAR at the time that the City's Project Contingency is used.

1.6 Guaranteed Maximum Price (GMP) Proposals

- A. The CMAR will present the proposed GMP for the entire Work (or portions of the Work) in a format acceptable to the City as set forth in Exhibit C, attached, and by reference made a part of this Contract. The City may request a GMP Proposal for all or any portion of the Project at any time during the design phase. Any GMP Proposals submitted by the CMAR will be based on and be consistent with the current updated/revised cost estimate at the time of the request, the associated estimates for construction costs, and will include any clarifications or assumptions upon which the GMP Proposal(s) are based.
- B. GMP Proposals for the entire Project will be the sum of the maximum Cost of the Work, and also include the CMAR's Construction Fee, General Conditions Costs, Taxes, Insurance, Bonds, CMAR Indirect Costs, and City's Project Contingency.

- C. The CMAR, in preparing any GMP Proposal, will obtain from the Design Professional, 6 sets of signed, sealed, and dated plans and specifications (including all addenda). The CMAR will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CMAR will mark the face of each document of each set of plans and specifications upon which its proposed GMP is based. The CMAR will send one set of those documents to the City's Contract Administrator, keep one set, and return the third set to the Design Professional.
- D. The CMAR will include an updated/revised Project Schedule with any GMP Proposal(s) that reflects the Scope of Work shown in the current set of design documents upon which the GMP Proposal(s) is based. Any Project Schedule updates/revisions will continue to comply with the requirements of Article 1.2.
- E. If the Construction Services Contract is negotiated as a not-to-exceed amount, all GMP savings resulting from a lower actual Project cost than anticipated by the CMAR will revert to the City.

1.7 Guaranteed Maximum Price (GMP) Review and Approval

- A. The CMAR will meet with the City and the Design Professional to review any GMP Proposal(s) and review the written statement of its basis. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CMAR will make adjustments as necessary to the GMP Proposal, its basis, or both.
- B. Upon receipt of any GMP Proposal from the CMAR, the City may submit the same documents that were used by the CMAR in developing its GMP to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals. If the CMAR GMP Proposal is greater than that of the independent third party or Design Professional's estimate, the City may require the CMAR to reconfirm its GMP Proposal. The CMAR will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of its GMP Proposal or present a report identifying, explaining and substantiating the differences within 7 days of the City's request.
- C. If design changes are required during the review and negotiation of GMP Proposals, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. These revised Construction Documents will be furnished to the CMAR. The CMAR will promptly notify the Design Professional and the City in writing if any revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.
- D. The CMAR guarantees to complete the Project at a Cost that will not exceed the final approved GMP Proposal amount, and the CMAR assumes the responsibility for paying any difference between the actual Cost of the Work and that amount.

- E. The CMAR may then be requested to, or at its own discretion, may submit a revised GMP Proposal for consideration by the City. At that time the City may do one of the following:
1. Accept the CMAR original or revised GMP Proposal, if within the City's budget, without comment.
 2. Accept the CMAR original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the CMAR that the Project Budget has been increased to fund the differences.
 3. Reject the CMAR's original or revised GMP Proposal in which event, the City may terminate this Contract and elect to not enter into a separate Contract with the CMAR for the construction phase associated with the Scope of Work reflected in the GMP Proposal.

1.8 Subcontractor and Major Supplier Selections

- A. The CMAR will select major Subcontractors and major Suppliers, subject to first obtaining the City's approval. This may occur before or after submission of a GMP Proposal. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors must not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CMAR. The CMAR is solely responsible for the performance of the selected Subcontractors/Suppliers.
1. The CMAR will prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval or the CMAR may use the City's plan as described in Article 1.9(B) and (C). This Subcontractor selection plan will identify those Subcontractor trades anticipated to be selected by qualifications only as provided in Article 1.9 (B) and those Subcontractor trades anticipated to be selected by qualifications and competitive bid as provided in Article 1.9 (C). This plan will also identify those Subcontractors that will not be selected through a formalized qualifications-based selection process. The Subcontractor selection plan must be consistent with the selection requirements included in this Contract.
- B. Selection by qualifications only - The City may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when the CMAR can demonstrate it is in the best interest of the Project.
1. The CMAR will apply the approved Subcontractor selection plan approved by the City in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation. The selection plan will be the CMAR's own selection plan approved by the City or the City's selection plan as provided in this Article 1.9 (B).
 2. The CMAR will negotiate costs for services/supplies from the subcontractors/suppliers under the approved qualifications only method.

3. The CMAR may elect to comply with the following procedures in its selection of Subcontractor(s) or Suppliers(s) based on qualifications only:
 - a. The Request for Qualifications (RFQ) will contain the best description of the services or material desired; and
 - b. A statement that only unpriced statements of qualifications will be considered; and
 - c. State the requirements for the project, such as drawings and descriptive literature; and
 - d. State the criteria for evaluating the qualifications; and
 - e. A closing date and time for receipt of a statement of qualifications and the location where the statements should be delivered or mailed; and
 - f. A statement that discussions may be held; and
 - g. A statement that only statements of qualifications determined to be acceptable will be considered for award.
4. The RFQ may be amended after the submission of the statements of qualifications. Any amendment will be distributed only to bidders who submitted statements of qualifications. Those bidders will be permitted to submit new unpriced statements of qualifications or to amend statements already submitted.
5. Statements of Qualifications will not be opened publicly, but will be opened in the presence of the CMAR. The contents of unpriced statements of qualifications will not be disclosed to unauthorized persons.
6. Statements of Qualifications will be evaluated solely in accordance with the criteria stated in the RFQ and will be determined to be either acceptable for further consideration or unacceptable. A determination that the statement is unacceptable will be in writing, state the basis of the determination and be retained by the CMAR. The CMAR will notify the bidder of the determination and the bidder will not be given an opportunity to amend its statement of qualifications further.
7. The CMAR may conduct discussions with any bidder who submits an acceptable or potentially acceptable statement of qualifications. During discussions, the CMAR will not disclose any information derived from any other bidder's statement of qualifications.
8. The CMAR will negotiate costs for services/supplies from the Subcontractor/ Supplier selected under this method. Without first giving written notice to the City, no change in the recommended Subcontractors/ Suppliers will be allowed.

- C. Selection by qualifications and competitive bid – The CMAR will apply the City's subcontractor selection plan stated above if previously approved by the City in the CMAR's evaluation of the qualifications of subcontractors/suppliers by providing the City with its process to prequalify prospective subcontractors/suppliers. Selection may not be based on price alone. All Work for major Subcontractors and major Suppliers will then be competitively bid to the prequalified Subcontractors unless a Subcontractor or Supplier was selected in accordance with Article 1.9 (B) above. The CMAR may elect to comply with the following procedures in step 2 of its competitive bid process.
1. The CMAR will develop Subcontractor and Supplier interest, submit the names of a minimum of 3 qualified Subcontractors or Suppliers for each trade in the Project and solicit bids for the various Work categories. If there are not 3 qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances, the CMAR may request approval by the City to submit less than 3 names. Without first giving written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.
 2. If the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
 3. The CMAR will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers. The CMAR will then review the price bids submitted by Subcontractors and Suppliers and make its' selection based on the responsive and responsible bidder with the lowest price.
 4. If the CMAR desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CMAR's bid will be evaluated in accordance with the process identified in the Invitation for Bids. If events warrant and the City concurs that in order to insure compliance with the Project Schedule or cost, the CMAR may self-perform Work without bidding or re-bidding the Work. (For horizontal construction, as defined in A.R.S. § 34-101(15), the CMAR must self-perform not less than 45% of the Work as required by A.R.S. § 34-605(G) (2).)
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- D. ~~If after receipt of sub-bids or after award of Subcontractors and Suppliers, the~~ City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CMAR will nominate a substitute Subcontractor or Supplier, preferably if this option is still available, from those who submitted Subcontractor bids for the Work affected. Once the substitute Subcontractors and Suppliers are consented to by the City, the CMAR's proposed GMP for the Work or portion of the Work will be correspondingly adjusted to reflect any higher or lower costs from any substitution. Under no circumstances will the City's objection or comment on any Subcontractor or Supplier relieve the CMAR of its sole responsibility for control over the methods, means and processes by which the Work is accomplished.

1.9 Approved Alternates

- A. Plans and specifications may contain references to equipment or materials (patented or unpatented) or "approved alternate(s)." These references will be regarded as establishing a standard of quality, finish, appearance, performance or as indicating a selection or design based upon compatibility with existing equipment, materials, or details of construction inherent to the Project design. These references will not be construed as limiting the selection to a specified item, source, or design detail. The use of an alternate or substitute item or source as an approved alternate will be permitted, subject to the provisions of this Article 1.9.
- B. The CMAR/Subcontractor, as applicable, will submit a written Proposal for substitution to the CMAR and Contract Administrator at least 8 days before the original deadline for receiving Bids. Requests for substitution submitted to the City's contracted Consultant or other City Staff will not be reviewed. The submittal envelope must be clearly marked with Bid Number and "REQUEST FOR APPROVED ALTERNATE". Requests must be time stamped by the CMAR and Contract Administrator by 4:00 P.M. (approved alternate date). The Proposal will include all information necessary for proof of quality and suitability for substitution including benefits, engineering design and data (calculations) or detailed plan modifications which may be required by the substitution. The Bidder will submit additional information or samples when required.
- C. The CMAR and the Contract Administrator will evaluate the information submitted, perform tests when necessary and make comparisons in order to approve or reject the Proposal. If rejected, the CMAR will give notice of rejection to the Bidder submitting the Proposal.
- D. The CMAR, if the Proposal is accepted, will issue a written addendum to the Invitation for Bid specifying the approved alternates and distribute the modification in the same manner as the original bidding documents.
- E. The Specifications may reference equipment or materials "or alternate". The reference to "or alternate" will be construed to mean "or approved alternate" in every instance. Use of an alternate or substitute item will be allowed only if approval was received as outlined in this Article.
- F. Construction Document references to equipment, materials, patented processes ~~by manufacturer, trade name, make, or catalog number may be permitted, unless~~ indicated that no substitutes or alternates may be permitted, subject to the following:
 - 1. The CMAR will certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.
 - 2. The submittal will state any required changes in the Construction Documents to adapt the design to the proposed substitution.

3. The submittal will contain an itemized estimate of all costs and credits that will result directly or indirectly from the acceptance of the substitution including cost of design, license fees, royalties, and testing. The submittal will also include any adjustment in the Contract Time created by the substitution. Substitutions will only be considered if they do not extend Contract Time.

ARTICLE 2 - PERIOD OF SERVICES

- 2.0 The CMAR will perform preconstruction and design phase services in this Contract in accordance with the terms and conditions of Article 1 and the most current update/revised Project Schedule. Failure on the part of the CMAR to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the City.
- 2.1 If the date of performance of any obligation or the last day of any time period provided for falls on a Saturday, Sunday, or holiday for the City, then the obligation will be due and owing, and the time period will expire, on the first day next which is not a Saturday, Sunday or legal City holiday. Unless an exception is provided in this Contract, any performance required will be timely made if completed no later than 5:00 p.m. (Local time) on the day of performance.

ARTICLE 3 - CONTRACT AMOUNT AND PAYMENTS

3.0 Contract Amount

- A. Based on the preconstruction phase services fee proposal submitted by the CMAR and accepted by the City (which by reference is made a part of this Contract); the City will pay the CMAR a fee not to exceed \$147,221.00

3.1 Payments

- A. Requests for monthly payments by the CMAR for design phase services will be submitted to the Contract Administrator on the City's "Payment Request" form and will be accompanied by a progress report, detailed invoices, and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subcontractors' requests for payment, plus similar narratives and listings of Deliverables associated with their Work. ~~Payment for services negotiated as a lump sum will be made in accordance with the percentage of Work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.~~
- B. The fees for the CMAR and any Subcontractors will be based upon the hourly rate schedule included as Exhibit B attached, and by reference made a part of this Contract.
- C. The CMAR agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the City during the progress of any portion of the services specified in this

Contract. Any delays or hindrances will be solely compensated for by an extension of time for a reasonable period as may be mutually agreed between the parties. It is agreed, however, that permitting the CMAR to proceed to complete any services, in whole or in part, after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights.

- D. If any service(s) executed by the CMAR is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CMAR, the CMAR is to be paid for the services performed before the abandonment or suspension. If the City suspends the Work for 181 consecutive days or more, the suspension will be a Contract termination for convenience.

ARTICLE 4 - CITY'S RESPONSIBILITIES

4.0 The City, at no cost to the CMAR, will furnish the following information:

- A. One copy of data the City determines is pertinent to the Work. However, the CMAR will be responsible for searching the records and requesting information it considers reasonably required for the Project.
- B. All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
- C. The name of the City employee or City's representative who will serve as the Contract Administrator during the term of this Contract is stated in Article 5.12 (A). The Contract Administrator has the authority to administer this Contract and will monitor the CMAR's compliance with all terms and conditions stated in this Contract. All requests for information from or decisions by the City on any aspect of the Work or Deliverables will be directed to the Contract Administrator.

4.1 The City additionally will:

- A. Contract separately with one or more design professionals to provide Design Professional or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CMAR for its information. The CMAR will have no right to limit or restrict any changes of these services that are otherwise mutually acceptable to the City and the Design Professional.
- B. Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CMAR except for those copies whose cost has been reimbursed by the City.
- C. Provide the CMAR with adequate information in its possession or control regarding the City's requirements for the Project.
- D. Give prompt written notice to the CMAR when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications.

E. Notify the CMAR of changes affecting the budget allocations.

- 4.2 The City's Contract Administrator will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the Contract Administrator considers appropriate to the CMAR.

ARTICLE 5 - CONTRACT CONDITIONS

5.0 Project Documents and Copyrights

- A. City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original Mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Contract Administrator before the final payment is made to the CMAR. But in the event these Project Documents are altered, modified or adapted without the written consent of the CMAR, which consent the CMAR will not unreasonably withhold, the City agrees to hold the CMAR harmless to the extent permitted by law, from the legal liability arising out of or resulting from the City's alteration, modification or adaptation of the Project Documents.
- B. CMAR to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CMAR, its Subcontractors or personnel, during the course of performing this Contract or arising out of the Project will belong to the CMAR.
- C. License to City for Reasonable Use: The CMAR grants, and will require its Subcontractors to grant a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Contract. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Project Documents, then Article 6.1 (A) applies.
- D. Documents to Bear Seal: When applicable and required by state law, the CMAR and its Subcontractors will endorse, by an Arizona professional seal, all plans, works, and Deliverables prepared by them for this Contract.

5.1 Completeness and Accuracy of CMAR's Work

The CMAR will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and all other preconstruction phase Deliverables prepared or compiled in accordance with its obligations under this Contract and will at its sole expense correct its Work or Deliverables. The fact that the City has accepted or approved the CMAR's Work or Deliverables will in no way relieve the CMAR of any of its responsibilities under this Contract, nor does this requirement to correct the Work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the City.

5.2 Alteration in Character of Work

- A. In the event an alteration or modification in the character of the Work or Deliverable results in a substantial change in this Contract, materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the Work or Deliverable will be performed as directed by the City. But before any altered or modified Work begins, a Change Order or Amendment will be approved and executed by the City and the CMAR. This Change Order or Amendment will not be effective until approved by the City. The Contract Administrator has the authority to authorize Change Orders up to the limits permitted by the Procurement Code.
- B. Additions to, modifications of, or deletions from the Project provided in this Contract may be made, and the compensation to be paid to the CMAR may accordingly be adjusted by mutual agreement of the contracting parties.
- C. No claim for extra Work done or materials furnished by the CMAR will be allowed by the City except as provided in this Contract, nor will the CMAR do any Work or furnish any material(s) not covered by this Contract unless the Work or material is first authorized in writing. Work or material(s) furnished by the CMAR without first obtaining written authorization will be at the CMAR's sole responsibility, cost, and expense, and the CMAR agrees that without first obtaining written authorization, no claim for compensation for the Work or materials furnished will be made.

5.3 Data Confidentiality

- A. As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CMAR in the performance of this Contract.
- B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CMAR in connection with the CMAR's performance of this Contract are confidential and proprietary information belonging to the City.
- C. The CMAR will not divulge data to any third party without first obtaining the written consent of the City. The CMAR will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
 - 1. Data which was known to the CMAR before its performance under this Contract unless the data was acquired in connection with Work performed for the City;
 - 2. Data which was acquired by the CMAR in its performance under this Contract and which was disclosed to the CMAR by a third party, who to

the best of the CMAR's knowledge and belief, had the legal right to make the disclosure and the CMAR is not otherwise required to hold the data in confidence; or

3. Data which is required to be disclosed by the CMAR by virtue of law, regulation, or court.
- D. In the event the CMAR is required or requested to disclose data to a third party, or any other information to which the CMAR became privy as a result of any other Contract with the City, the CMAR will first notify the City, as provided in this Article, of the request or demand for the data. The CMAR will timely give the City sufficient facts, so that the City can have a meaningful opportunity to either give its consent or take any action that the City may consider appropriate to protect the data or other information from disclosure.
- E. The CMAR, unless prohibited by law, will promptly deliver, as stated in this Article, a copy of all data to the City within 10 calendar days after completion of services. All data will continue to be subject to the confidentiality provisions of this Contract.
- F. The CMAR assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Article are violated by the CMAR, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article will be considered to cause irreparable harm that justifies injunctive relief in court.

5.4 Project Staffing

- A. Before the start of any Work or Deliverable under this Contract, the CMAR will submit to the City an organization chart for the CMAR staff and Subcontractors and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or any revisions), who will be involved in performing the services described in this Contract. Unless otherwise informed, the City acknowledges its acceptance of personnel to perform these services under this Contract. In the event the CMAR desires to change any key personnel from performing the services under this Contract, the CMAR will first submit the qualifications of the proposed substituted personnel to the City for approval. Key personnel will include, but are not limited to, principal-in-charge, contract administrator, superintendent, project director, or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning. The City will approve all key personnel.
- B. The CMAR will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CMAR's staff, the CMAR will take prompt corrective action acceptable to the City and, if required, remove the personnel from the Project and replace or add with new personnel acceptable to the City.

5.5 Independent Contractor

The CMAR is and will be an independent contractor and not an employee or agent of the City and whatever measure of control the City exercises over the Work or Deliverable will be as to the results of the Work only. No provision in this Contract will give or be construed to give the City the right to direct the CMAR as to the details of accomplishing the Work or Deliverable. These results will comply with all applicable laws and ordinances.

5.6 Termination and Cancellation

A. The City has the right to terminate or cancel this Contract or abandon any portion of the Project for which services have not been performed by the CMAR.

B. Termination for Convenience: The City reserves the right to terminate this Contract or any part of it for its sole convenience with 30 days written notice. In the event of termination, the CMAR will immediately stop all Work, and will immediately cause any of its Suppliers and Subcontractors to cease Work. Upon termination, the CMAR will deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, and other Work and Deliverables entirely or partially completed, together with all unused materials supplied by the City. The CMAR will appraise the Work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CMAR's Work or Deliverables to appraise the Work completed. As compensation in full for services performed to the date of the termination, the CMAR will receive a fee for the percentage of services actually completed. This fee will be in the amount to be mutually agreed upon by the CMAR and the City, based on the agreed Scope of Work. If there is no mutual agreement, the Contract Administrator will determine the percentage of completion of each task detailed in the Scope of Work and the CMAR's compensation will be based upon this determination. The City will make this final payment within 60 days after the CMAR has delivered the last of the partially completed items. The CMAR will not be paid for any Work done after receipt of the notice of termination, nor for any costs incurred by the CMAR's Suppliers or Subcontractors, which the CMAR could reasonably have avoided.

Cancellation for Cause: The City may also cancel this Contract or any part of it by first giving 7 days written notice for cause in the event of any default by the CMAR, or if the CMAR fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance despite a reasonable opportunity to cure, as judged by the Contract Administrator, and failure to provide the City, upon request, with adequate assurances of future performance will all be causes allowing the City to cancel this Contract for cause. In the event of cancellation for cause, the City will not be liable to the CMAR for any amount, and the CMAR will be liable to the City for any and all damages sustained by reason of the default, which gave rise to the cancellation.

In the event the CMAR is in violation of any Federal, State, County or City law, regulation or ordinance, the City may cancel this Contract immediately upon giving notice to the CMAR.

In the event the City cancels this Contract or any part of the services contracted for, the City will notify the CMAR in writing, and immediately upon receiving this notice, the CMAR will discontinue advancing the Work under this Contract and proceed to close all operations, and the expenditure, if any, of costs resulting from the abandonment or cancellation.

Upon termination, cancellation or abandonment, the CMAR will deliver to the City all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic media, together with all unused materials supplied by the City. Use of incomplete data will be at the City's sole responsibility. If through any cause, the CMAR fails to fulfill in a timely and proper manner its obligations under this Contract, or if the CMAR violates any of the covenants, Contracts, or stipulations of this Contract, the City may withhold any payments to the CMAR for the purpose of setoff until the exact amount of damages due the City from the CMAR is determined by the parties or by a court of competent jurisdiction.

- C. The City and the CMAR agree to the full performance of the covenants contained in this Contract, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CMAR.
- D. The CMAR, upon termination, cancellation, or abandonment, will promptly deliver to the City all reports, estimates and other Work or Deliverables entirely or partially completed, together with all unused materials supplied by the City.
- E. The CMAR will appraise the Work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CMAR's Work or Deliverables to appraise the Work completed.
- F. The CMAR will receive compensation in full for services satisfactorily performed to the date of termination or cancellation. The fee will be paid in accordance with Article 3.1 of this Contract, and will be an amount mutually agreed upon by the CMAR and the City. If there is no mutual agreement, the final determination will be made in accordance with Article 5.8, "Disputes". However, in no event will the fee exceed that stated in Article 3 or as amended in accordance with Article 5.2, "Alteration in Character of Work". The City will make the final payment within 60 Days after the CMAR has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.
- G. If the City improperly cancels this Contract for cause, the cancellation for cause will be converted to a termination for convenience in accordance with the provisions of Article 5.6 (B).

5.7 Funds Appropriation

If the City Council does not appropriate funds to continue this Contract and pay for Contract charges, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice to the CMAR at least 30 days before the end of its current fiscal period and will pay the CMAR for all approved charges incurred through the end of the period.

5.8 Disputes

In any unresolved dispute arising out of an interpretation of this Contract or the duties required under this Contract, the final determination at the administrative level will be made by the Contract Administrator.

5.9 Withholding Payment

The City, in compliance with Title 34 of the Arizona Revised Statutes, reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CMAR, until such time as a settlement on those claims has been reached.

5.10 Records/Audit

- A. Records of the CMAR's direct personnel payroll, reimbursable expenses related to this Project and records of accounts between the City and the CMAR will be kept on a generally recognized accounting basis. The City, its authorized representative, or the appropriate federal agency, reserve the right to audit the CMAR's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. The City reserves the right to decrease the Contract Amount or payments made on this Contract if, upon audit of the CMAR's records, the audit discloses the CMAR has provided false, misleading, or inaccurate cost and pricing data. If an audit in accordance with this Article, discloses overcharges, of any nature, by the CMAR to the City in excess of 1% of the total contract billings, the actual cost of the City's audit will be reimbursed to the City by the CMAR. Any adjustments or payments which must be made as a result of any audit or inspection of the CMAR's invoices or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of the City's findings to the CMAR.
- B. The CMAR will include a provision similar to this Article 5.11 in all of its Contracts with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease the Contract Amount or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

- C. This audit provision includes the right to inspect personnel records as required by Article 7.

5.11 Indemnification

To the fullest extent permitted by law, the CMAR, its successors, assigns and guarantors, will defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligence, recklessness, or intentional wrongful conduct to the extent caused by the CMAR performing work or services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages by any of the CMAR employees.

Insurance provisions stated in this Contract are separate and independent from the indemnity provisions of this paragraph and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this Article will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

5.12 Notices

- A. Unless otherwise provided in this Contract, demands under this Contract will be in writing and will be considered to have been properly given and received either (1) on the date of service if personally served on the party to whom notice is to be given, or (2) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

To City:	City of Scottsdale 7447 E. Indian School Road, Suite 205 Capital Project Management Division Scottsdale, Arizona 85251
To CMAR:	Greg Beeter MGC Contractors, Inc. 4110 East Elwood Street Phoenix, Arizona 85040
To Design Professional:	Bill Roberts GHD Inc. 7600 North 16 th Street, Suite 205 Phoenix, Arizona 85020
Copy to:	Anna Leyva, Contract Administrator Capital Project Management 7447 E. Indian School Road, Suite 205 Scottsdale, Arizona 85251

Notice by facsimile or electronic (e-mail) will not be considered adequate notice as required in this Contract.

5.13 Intellectual Property

1. The CMAR will pay all royalties and license fees associated with its performance of services under this Contract.
2. The CMAR will defend any action or proceeding brought against the City based on any claim that the Work, or any part of it, or the operation or use of the Work or any part of it, constitutes infringement of any United States patent or copyright, issued now or at some later date. The City will give prompt written notice to the CMAR of any action or proceeding and will reasonably provide authority, information and assistance in the defense of the action. The CMAR will defend, indemnify and hold harmless the City from and against all damages, expenses, losses, royalties, profits and costs, including but not limited to attorneys' fees and expenses awarded against the City or the CMAR in any action or proceeding. The CMAR agrees to keep the City informed of all developments in the defense of the actions. The City may be represented by, and actively participate through its own counsel in any suit or proceedings if it so desires.
3. If the City is enjoined from the operation or use of the Work, or any part of the Work, as the result of any patent or copyright suit, claim, or proceeding, the CMAR will at its sole expense take reasonable steps to procure the right to operate or use the Work. If the CMAR cannot procure this right within a reasonable time, the CMAR will promptly, at the CMAR's option and at the CMAR's expense, (a) modify the Work so as to avoid infringement of any patent or copyright or (b) replace the Work with Work that does not infringe or violate any patent or copyright.
4. Articles 5.13 (2) and 5.13 (3) above will not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (a) relating solely to a particular process or product of a particular manufacturer specified by the City and not offered or recommended by the CMAR to the City or (b) arising from modifications to the Work by the City or its agents after acceptance of the Work.
5. The obligations stated in this Article 5.13 will constitute the sole Contract between the parties relating to liability for infringement or violation of any patent or copyright.

5.14 Conflict of Interest

- A. To evaluate and avoid potential conflicts of interest, the CMAR will provide written notice to the City, as stated in this Article, of any Work or services performed by the CMAR for third parties that may involve or be associated with any real property or personal property owned or leased by the City. This notice will be given 7 business days before the start of the Project by the CMAR for a third party or 7 business days before an adverse action as defined below. Written notice and disclosure will be sent to the Contract Administrator identified in Article 5.14 (A).

- B. Actions that are considered to be adverse to the City under this Contract include but are not limited to:
1. Using data as defined in this Contract acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
 2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
 3. Using data to produce income for the CMAR or its employees independently of performing the services under this Contract, without first obtaining the written consent of the City.
- C. The CMAR represents that except for those persons, entities and projects identified to the City, the services to be performed by the CMAR under this Contract are not expected to create an interest with any person, entity or third party project that is or may be adverse to the interests of the City.
- D. The CMAR's failure to provide a written notice and disclosure of the information as stated in this Article on Conflicts of Interest will constitute a material breach of this Contract.

5.15 Contractor's License

Before any award of this Contract, the CMAR must provide to the City's Capital Project Management Office, its Contractor's License Classification and number and its Federal Tax I.D. number and Federal W-9 Form.

5.16 Successors and Assigns

This Contract will extend to and be binding upon the CMAR, its successors and assigns, including any individual, company, partnership, or other entity with or into which the CMAR will merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the CMAR will sell its assets. No right covered by this Contract will be assigned in whole or in part without first obtaining the written consent of the City. In no event will any contractual relationship be created or be construed to be created as between any third party and the City.

5.17 Force Majeure

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts include, but are not limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

5.18 Taxes

The fee listed in this Contract includes any and all taxes applicable to the activities under this Contract. The City will have no obligation to pay additional amounts for taxes of any type.

5.19 Non-Waiver Provision

The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions of this Contract will not be construed to be a waiver of these provisions, nor will it affect the validity of this Contract or any part of it, or the right of either party to enforce each and every provision.

5.20 Jurisdiction

This Contract will be considered to be made under, and will be construed in accordance with and governed by the laws of the State of Arizona, without regard to the conflicts or choice of law provisions. An action to enforce any provision of this Contract or to obtain any remedy will be brought in the Superior Court, Maricopa County, Arizona, and for this purpose, each party expressly and irrevocably consents to the jurisdiction and venue of that Court.

5.21 Survival

All warranties, representations and indemnifications by the CMAR will survive the completion or termination of this Contract.

5.22 Modification

Any amendment, modification, or variation from the terms of this Contract will be in writing and will be effective only after approval of all parties signing the original Contract.

5.23 Severability

If any term or provision of this Contract is found to be illegal or unenforceable, then despite this illegality or unenforceability, this Contract will remain in full force and effect and the term or provision will be considered to be deleted.

5.24 Integration

This Contract constitutes the entire understanding of the parties and no representations or Contracts, oral or written, made before its execution will vary or modify its terms.

5.25 Time Is of the Essence

Time of each of the terms, covenants, and conditions of this Contract is expressly made of the essence.

5.26 Third Party Beneficiary

All duties and responsibilities undertaken in compliance with this Contract are for the sole and exclusive benefit of the City and the CMAR and not for the benefit of any other party.

5.27 Cooperation and Further Documentation

The CMAR agrees to provide the City any other properly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

5.28 Conflict in Language

All Work or Deliverables performed will conform to all applicable City of Scottsdale codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

5.29 Attorney's Fees

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach of default, the prevailing party will be entitled to receive from the other party reasonable attorney's fees and reasonable costs and expenses, determined by the court sitting without a jury, which will be considered to have accrued on the commencement of the action and will be enforceable whether or not the action is prosecuted to judgment.

5.30 Headings

The headings used in this Contract, or any other Contract Documents, are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.

5.31 City's Right of Cancellation

All parties to this Contract acknowledge that this Contract is subject to cancellation by the City of Scottsdale as provided by the provisions of Section 38-511, Arizona Revised Statutes.

ARTICLE 6 - INSURANCE

6.0 Insurance Requirements

- A. Concurrently with the execution of this Contract, the CMAR must furnish the City a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona, or one that is named on the List of Qualified Unauthorized Insurers maintained by the Arizona Department of Insurance.
- B. The CMAR, Subcontractors and Subconsultants must procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the Work by the CMAR, his agents, representatives, employees, or Subcontractors.

- C. The insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
- D. The City in no way warrants that the minimum limits contained in this Contract are sufficient to protect the CMAR from liabilities that might arise out of the performance of the services contracted for under this Contract by the CMAR, his agents, representatives, employees, Subcontractors or Subconsultants and the CMAR is free to purchase any additional insurance as may be determined necessary. The City will not pay for higher limits, but if the CMAR pays for insurance with higher limits, the CMAR will name the City as an additional insured on any of this insurance.

6.1 Minimum Scope and Limits of Insurance

The CMAR must provide coverage at least as broad and with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$2,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$100,000
Medical Expense (Any one person)	Optional

B. Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles

Combined Single Limit Per Accident For Bodily Injury and Property Damage	\$1,000,000
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C. Workers' Compensation and Employers Liability

Workers' Compensation Statutory	
Employers Liability: Each Accident	\$100,000
Disease - Each Employee	\$100,000
Disease - Policy Limit	\$500,000

6.2 Self-Insured Retentions

Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

6.3 Other Insurance Requirements

The policies are to contain, or be endorsed to contain, the following provisions:

- A. Contractors Professional Liability: The CMAR must carry Contractors Professional Liability insurance to cover the residual, contingent, and passive design exposures of the CMAR.

1. The City of Scottsdale, its officers, officials, agents, and employees, are to be named as additional insureds with respect to liability arising out of activities performed by or on behalf of the CMAR, including the City's general supervision of the CMAR; products and completed operations of the CMAR; and automobiles owned, leased, hired or borrowed by the CMAR.
 2. Vehicle Liability: The CMAR must maintain Business Automobile Liability with coverage at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or an equivalent.
 3. The Commercial General Liability Insurance must contain broad form contractual liability coverage and will not exclude liability arising out of explosion, collapse, or underground hazard ("XCU").
 4. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CMAR, even if those limits of liability are in excess of those required by this Contract. The Commercial General Liability policy will be at least as broad as the Insurance Service Office, Inc.'s CG 0 0 01 07 98.
- B. Contractors Professional Limits of Liability: The CMAR must carry limits of \$1,000,000 each Project and \$2,000,000 in the Aggregate under a stand-alone policy or included by endorsement under the Commercial General Liability policy. The CMAR, its successors and or assigns, is required to maintain this Professional Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. Certificates of Insurance citing that applicable coverage is in force and contains the provisions required by this Contract must be submitted for the 3-year period.
1. The CMAR's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Insurance or self-insurance maintained by the City, its officers, officials, agents, and employees must be in excess of the CMAR's insurance and will not contribute to it.
 2. The CMAR's insurance must apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. The coverage provided by the CMAR and its Subcontractors must not be limited to the liability assumed under the indemnification provisions of this Contract.
 3. The policies must contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from Work performed for the City.
 4. Workers' Compensation and Employers Liability policies are to contain, or be endorsed to contain, the following: The insurer must agree to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from Work performed for the City.

5. Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage must extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the Work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required in this Contract for the 3 year period.

C. Commercial General Liability and Automobile Liability Coverages

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City of Scottsdale, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the CMAR including the City's general supervision of the CMAR; Products and Completed operations of the CMAR; and automobiles owned, leased, hired, or borrowed by the CMAR.
2. The CMAR's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.
3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the CMAR even if those limits of liability are in excess of those required by this Contract.
4. The CMAR's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees must be in excess of the coverage provided by the CMAR and must not contribute to it.
5. The CMAR's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. Coverage provided by the CMAR must not be limited to the liability assumed under the indemnification provisions of this Contract.
7. The policies must contain a waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the CMAR for the City.
8. The CMAR, its successors or assigns, is required to maintain Commercial General Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. The CMAR must submit Certificates of Insurance evidencing the Commercial General Liability insurance during this 3 year period containing all the insurance requirements stated in this Contract including naming the City of Scottsdale, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

9. Workers' Compensation and Employers Liability Coverage: The insurer must agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from Work performed by the CMAR for the City.

6.4 Subconsultant's and Subcontractor's Insurance

The CMAR's Certificates of Insurance must include all Subcontractors and Subconsultants as insureds under its policies or the CMAR must maintain separate certificates and endorsements for each Subcontractor and Subconsultant. All coverages for Subcontractors and Subconsultants must be in the amounts shown in Article 6.2.

6.5 Notice of Cancellation

Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided, canceled by either party, reduced in coverage or in limits except after first giving 30 days written notice, by certified mail, return receipt requested to:

Anna Leyva
Contract Administrator
Capital Project Management
7447 E. Indian School Road, Suite 205
Scottsdale, Arizona 85251

City of Scottsdale
Risk Management Office
7447 E. Indian School Road, Suite 225
Scottsdale, Arizona 85251

6.6 Acceptability of Insurers

Insurance is to be placed with insurers properly licensed or approved unlicensed companies in the State of Arizona and with an A. M. Best's rating of no less than B++6. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CMAR from potential insurer insolvency.

6.7 Verification of Coverage

- A. The CMAR must furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverages must be clearly noted on the Certificate of Insurance.
- B. All certificates and endorsements are to be received and approved by the City before Work commences except for Builder's Risk Insurance. Each insurance policy required by this Contract must be in effect on or before the earlier of the start of Work under the Contract Documents or the signing of this Contract except for Builder's Risk Insurance which must be in effect before the start of

Work and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

- C. All Certificates of Insurance required by this Contract must be sent directly to the City of Scottsdale, Capital Project Management. The Project number and Project description must be included on the Certificates of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time.

6.8 Approval

Any modification or variation from the insurance requirements in this Contract must be approved by the City of Scottsdale Risk Management Office, whose decision will be final. Any modification or variation will not require a formal contract amendment, but may be made by administrative action.

6.9 Effective Date

This Contract will be in full force and effect only when it has been approved and executed by the properly authorized City officials.

ARTICLE 7 - FEDERAL AND STATE LAW

7.0 Compliance with Federal and State Laws

The CMAR understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The CMAR agrees to comply with these laws in performing this Contract and to permit the City to verify compliance. The CMAR will also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees". The CMAR will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

Under the provisions of A.R.S. §41-4401, the CMAR warrants to the City that the CMAR and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the CMAR and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the CMAR or any of its subcontractors will be considered a material breach of this Contract and may subject the CMAR or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the CMAR or any subcontractor who works on this Contract to ensure that the CMAR or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the CMAR and any of its subcontractors to ensure compliance with this warranty. The CMAR agrees to indemnify, defend, and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider the CMAR or any of its subcontractors in material breach of this Contract if the CMAR and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the CMAR enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. The CMAR will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The CMAR's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

7.1 Equal Employment Opportunity

During the performance of this Contract the CMAR will follow the Federal government's Affirmative Action guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex, or national origin. The CMAR will include the terms of this provision in all contracts and subcontracts for work performed under this Contract, including supervision and oversight.

7.2 No Preferential Treatment or Discrimination

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity, or national origin.

7.3 Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents, or assigns will constitute a material breach of this Contract.

ARTICLE 8 - TERMS AND DEFINITIONS

Addenda - Written or graphic instruments issued before the submittal of the GMP Proposal(s), which clarify, correct, or change the GMP Proposal(s) requirements.

Allowance - means an agreed amount by the City and the DBM for items which may be required to complete the scope of work.

Alternate Systems Evaluations - Alternatives for design, means, and methods or other scope of work considerations that are evaluated using value engineering principles and have the potential to reduce construction costs while still delivering a quality and functional Project that meets City requirements.

Change Order - A written order signed by an authorized representative of the City and which approves changes in the total compensation or time allowed for completion of services consistent with S.R.C. Sec. 2-200.

City ("Owner") - means the City of Scottsdale, an Arizona municipal corporation. Regulatory activities handled by the City of Scottsdale Development Services, Planning and Fire Departments or any other City department are not subject to the responsibilities of the City under this Contract.

CMAR ("Construction Manager at Risk") - means a project delivery method in which:

- (a) There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the City may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
- (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
- (c) Design and construction of the project may be either:
 - (i) Sequential with the entire design complete before construction commences.
 - (ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
- (d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Contingency, City's Project - means a fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from the City's direct changes or unforeseen site conditions. The amount of the City's Contingency may be set solely by the City and will be in addition to the project costs included in the DBM's GMP packages. Use and management of the City's Contingency is described in Article 1.5 (C). The City's Contingency is an amount to cover changes initiated by the City, which may be incorporated into the GMP as an allowance at the City's discretion.

Contract ("Contract") - This written document signed by the City and the CMAR covering the design phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract.

Contract Administrator – means the person designated in Article 5.12.

Construction Documents - The plans, specifications, and drawings prepared by the Design Professional after correcting for permit review requirements and incorporating addenda and approved change orders.

Construction Fee - The CMAR's administrative costs, home office overhead, and profit, whether at the CMAR's principal or branch offices. This includes the administrative costs and home office costs and any limitations or exclusions that may be included in the General Conditions for the construction phase.

Contract Amount - The final approved not-to-exceed budget for this Contract as identified in Article 3.1.

Contract Documents - means the following items and documents in descending order of precedence executed by the City and the CMAR: (i) all written modifications, addenda, and Change Orders; (ii) the CMAR Construction Contract; (iii) this Preconstruction Contract, including all exhibits and attachments; (iv) written Supplementary Conditions; (v) Construction Documents; (vi) GMP Plans and Specifications.

Contract Time(s) - The number of days or the dates related to the contract time for the Design Phase Services Contract.

Cost of the Work - The direct costs necessarily incurred by the CMAR in the proper performance of the Work. The Cost of the Work must include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees, materials testing, and related items. The Cost of the Work will not include the CMAR's construction fee, general conditions fee, taxes, bonds, or insurance costs.

Day - Calendar day(s) unless otherwise specifically noted in the Contract Documents.

Deliverables - The work products prepared by the CMAR in performing the Scope of Work described in Exhibit A of this Contract. Major Deliverables to be prepared and provided by the CMAR during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor Contracts, Subcontractor bid packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

Design Team - refers to licensed design professionals that have been selected to work on the Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects project by the City. The Design Team has a services contract to furnish the design and may or may not provide construction administration for the Project. The Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects Design Team is led by William Roberts, a member of the firm GHD Inc.

Drawings (Plans) - Documents which visually represent the scope, extent, and character of the Work to be furnished and performed by the CMAR during the construction phase and which have been prepared or approved by the Design Professional and the City. Drawings include documents that have reached a sufficient stage of completion and released by the Design

PROJECT NAME: Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects

PROJECT NO: W9903 & W4708

9630831v2 CMAR Des (Rev. Sept 2013)

Professional solely for the purposes of review or use in performing constructability or biddability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100%), but *"not for construction"*. Drawings do not include shop drawings.

Effective Date of this Contract - The date specified in this Contract on which the Contract becomes effective, but if no date is specified, the date on which the City executes this Contract.

General Conditions Costs - Costs incurred by the CMAR during the construction phase and includes, but is not limited to the following types of costs; payroll costs for project manager or construction manager, but not both, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the Site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the CMAR or Subcontractors, fees for permits and licenses allowed in the contract. Charges for some home office administrative personnel may be included in General Conditions if agreed upon by both CMAR and city.

GMP Plans and Specifications - The plans and specifications provided in accordance with Article 1.7 (C) upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price or "GMP" means the sum of the maximum price of the Work as given in the GMP proposal; the CMAR's Construction Fee; General Conditions, Taxes, Bonds, Insurance Costs; Permit Fees; and City's Project Contingency as more fully described in Article 1.6 (B) (5) of this Contract.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CMAR submitted on the prescribed form stating the GMP prices for the entire Work (which includes Construction, General Conditions, Taxes, Bonds, Insurance, and Permit Fees) or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed in compliance with Article 1 of this Contract.

Hazardous substance means:

- (a) Any substance designated pursuant to sections 311(b) (2) (A) and 307(a) of the clean water act.
- (b) Any element, compound, mixture, solution or substance designated pursuant to section 102 of CERCLA.
- (c) Any hazardous waste having the characteristics identified under or listed pursuant to section 49-922.
- (d) Any hazardous air pollutant listed under section 112 of the federal clean air act (42 United States Code section 7412).
- (e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the federal toxic substances control act (15 United States Code section 2606).
- (f) Any substance which the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this paragraph or designates as a hazardous

substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.

Legal Requirements - means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-governmental entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

Notice to Proceed - A written notice given by the City to the CMAR fixing the date on which the CMAR will start to perform the CMAR's obligations under the Construction Services Contract.

Payment Request - The form that is accepted by the City and used by the CMAR in requesting progress payments or final payment and which will include any supporting documentation as is required by the Contract Documents or the City, and is based on a monthly estimate of the dollar value of the Work completed.

Preconstruction Services - means advice given during the design phase. Preconstruction Services will be contracted for between the City and the CMAR, as required by A.R.S. § 34-603(E). Services may include the following: design review, project scheduling, constructability reviews, alternate systems evaluation, cost estimates, GMP preparation, and subcontractor bid phase services.

Project - The scope of work as described in the Recital above and Exhibit "A" attached.

Project Requirements are costs for non-permanent construction work that is necessary to support CMAR and sub-contractor's work. Examples are temporary power, security guard traffic control, rental equipment (paid for by CMAR), and signage. It is an Allowance to be verified by expenses at end of construction. Submittal for Project Requirements costs should be itemized.

Project Team - Design phase services team consisting of the Design Professional, the CMAR, the Contract Administrator, the City's representatives and other stakeholders who are responsible for making decisions regarding the Project.

Samples - Physical examples that illustrate materials, equipment, or workmanship representative of a part of the construction phase Work and which establish the standards by which that portion of the construction phase Work will be judged.

Schedule of Values (SOV) - means the Document specified in the construction phase, which divides the Contract Price into pay items, so that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Progress Schedule depending on whether the Progress Schedule is cost-loaded or not.

Shop Drawings - means drawings, diagrams, schedules and other data specially prepared for the Work by the CMAR or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

Site - means the land or premises on which the Project is located generally described as the approximately Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects and located at 2857 N. Miller Road and 26602 N. Pima Road, respectively, City of Scottsdale, Arizona. The DBM will include in its contract with subcontractors the street or physical address of the construction site.

PROJECT NAME: Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects

PROJECT NO: W9903 & W4708

9630831v2 CMAR Des (Rev. Sept 2013)

Specifications - The section(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain applicable administrative details.

Subcontractor - means any person or entity retained by the CMAR as an independent contractor to perform a portion of the Work and must include material, men, and suppliers. All subcontractors must be selected in accordance with the selection plan stated in Article 1.9.

Subconsultant - A person, firm, or corporation having a Contract with the CMAR to furnish services required as its independent professional associate or consultant with respect to the Project.

Substantial Completion - When the Work, or when an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion of the Project for its intended purposes. This may include, but is not limited to: (a) approval by the City Fire Marshall and local authorities (Certificate of Occupancy); (b) issuance of elevator permit; (c) demonstration to the City that all systems are in place, functional, and displayed to the City or its representative; (d) installation of all materials and equipment; (e) City review and acceptance of all systems; (f) City review and acceptance of draft O&M manuals and record documents; (g) City operation and maintenance training completed; (h) HVAC test and balance completed [provide minimum 30 days before the projected substantial completion]; (i) completed landscaping and Site work; and (j) final cleaning.

Supplier - A manufacturer, fabricator, supplier, distributor, material men or vendor having a direct contract with the CMAR or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by the CMAR or any Subcontractor.

Total Float - Number of Days by which the design phase services or construction phase Work or any part of these phases may be delayed without necessarily extending a pertinent schedule milestone in the Project Schedule.

Work - The entire completed construction or the various separately identifiable parts of the construction, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

The City of Scottsdale by its Mayor and City Clerk have subscribed their names this
____ day of _____, 2013.

MGC Contractors, Inc.
4110 East Elwood Street
Phoenix, Arizona 85040

Randy Gates, President

CITY OF SCOTTSDALE,
an Arizona municipal corporation

ATTEST:

W.J. "Jim" Lane, Mayor

Carolyn Jagger, City Clerk

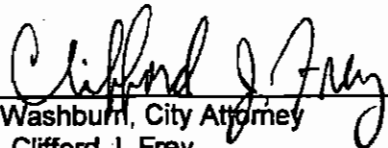
Derek E. Earle
City Engineer

George Woods
Acting Risk Management Director

RECOMMENDED:

Anna Leyva, Contract Administrator

APPROVED AS TO FORM:



Bruce Washburn, City Attorney
By: Clifford J. Frey
Senior Assistant City Attorney

**EXHIBIT A
SCOPE OF WORK**

Following is a brief description of the Project for which the design phase services specified in this Contract are to be performed:

Site 42B Booster Pump Station Upgrades:

This scope includes meeting attendance, design review, GMP development, submittal preparation, procurement, and scheduling for modifications to the existing pump station. The existing pump station equipment is outdated and not performing to current efficiency standards. GMP's will be produced and submitted to the City at design intervals of 60, 90, and 100%.

Site 71 Well Drilling:

Preparation, subcontract prequalification and bidding for the drilling of a replacement well for the existing Well 71. The cost will include attending and holding meetings, reviewing the Hydrogeologist design documents, receiving the bids from the drillers and preparing the GMP. The GMP will also include the demolition of the existing site along with all required appurtenant work to complete the drilling and testing of the well and the abandonment of the existing well. These services also include preparing and processing submittals for the well drilling and the construction and maintenance of a detailed schedule throughout the project.

Site 71 Booster Pump Station and Well Equipping:

This scope includes meeting attendance, design review, GMP development, submittal preparation, procurement, and scheduling for the new pump station and equipping the new well. The pump station will be housed in a building to blend in with the community and the well will be enclosed within the site fence. GMPs will be produced and submitted to the City at design intervals of 60, 90, and 100%.

City of Scottsdale Site 42 Pump Station		MGC Contractors, Inc. Preconstruction Services					Prepared by: RG & MP Date: 8-Oct-13		
Description	Hourly Rate	Meetings (kickoff, 30%, 60%, 90%)	Design Review (30%, 60%, 90%)	GMP Development (60% and final)	Submittals & Procurement	Construction Scheduling	Total Hours	Total Amount	
Principal	\$ 120.40	4	4	4		2	14	\$ 1,685.60	
Construction Manager	\$ 110.60	9	9	4	2	8	32	\$ 3,539.20	
Project Manager	\$ 100.80	12	12	16	32	24	96	\$ 9,676.80	
Project Engineer	\$ 67.20	12	12	16	64	24	128	\$ 8,601.60	
Estimator	\$ 92.40	8	4	24	8	2	47	\$ 4,342.80	
Superintendent	\$ 85.40	12	2	4		8	26	\$ 2,220.40	
Keller	\$ 95.20	12	12	120	16	8	168	\$ 15,993.60	

Subtotal	\$ 46,060.00
Profit 10%	\$ 4,606.00
Subtotal	\$ 50,666.00
Reimbursable, Printing, Copying, Delivery	\$ 800.00
Total	\$ 51,466.00

City of Scottsdale
Site 71 Well and Pump Station

MGC Contractors, Inc.
Preconstruction Services

Prepared by: RG & MP
Date: 8-Oct-13

Description	Hourly Rate	Meetings (kickoff, 30%, 60%, 90%)	Design Review (30%, 60%, 90%)	GMP Development (60% and final)	Submittals & Procurement	Construction Scheduling	Total Hours	Total Amount
Principal	\$ 120.40	8	8	8		4	28	\$ 3,371
Construction Manager	\$ 110.60	12	12	8	4	24	60	\$ 6,636
Project Manager	\$ 100.80	24	28	30	56	40	178	\$ 17,942
Project Engineer	\$ 67.20	24	22	30	96	40	212	\$ 14,246
Estimator	\$ 92.40	15	8	136	24	8	189	\$ 17,464
Superintendent	\$ 85.40	15	4	8		20	47	\$ 4,014
Keller	\$ 85.20	18	24	132	44	18	236	\$ 22,467

Subtotal	\$ 88,141
Profit 10%	\$ 8,614
Subtotal	\$ 94,755
Reimbursable, Printing, Copying, Delivery	\$ 1,000
Total	\$ 95,755

EXHIBIT C
SUBMITTAL REQUIREMENTS FOR THE GMP

GMP submittal, one copy for review.

Two (2) copies will be requested by the Capital Project Management prior to contract execution.

Exhibit Contents:

1. Scope of Work
 2. Summary of the GMP
 3. Schedule of Values – summary spreadsheet and backup documents
 4. List of Plans and Specifications used for GMP Proposal
 5. List of clarification and assumptions
 6. Subcontractor Bids on Subcontractor Letterhead
 7. Project Schedule
- A. Scope of Work will consist of a brief description of the work to be performed by CMAR and major points that the CMAR and the City must be aware of pertaining to the scope. (normally one paragraph is sufficient.)
- B. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:
- B1. The Project Requirements cost are for non-permanent construction work that is necessary to support CMAR and sub-contractor's work. Examples are temporary power, security guard traffic control rental equipment (paid for by CMAR) and signage. It is an Allowance to be verified by expenses at end of construction. Submittal for Project Requirements costs should be itemized.
- B2. The General Conditions are costs incurred by the CMAR during the construction phase. General conditions includes, but is not limited to the following types of costs; payroll costs for project manager or construction manager, but not both, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the Site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the CMAR or Subcontractors, fees for permits and licenses allowed in the contract. Charges for some home office administrative personnel may be included in General Conditions if agreed upon by both CMAR and City.
- C. Schedule of Values - spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CMAR's construction phase fee. The supporting document for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification assumptions used for the particular bid item listed on the schedule of values, if applicable.

- E. A list of the clarifications and assumptions made by the CMAR in the preparation of the GMP proposal, to supplement the information contained in the documents.
- F. A Critical Path Method diagram construction schedule.

NOTE: The submittal package must be kept as simple as possible all on 8½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final GMP submittal will consist of the following:

- 1. Two (2) Copies of the GMP (perforated as requested by Bids & Specifications) Velo or 3-hole punched.
- 2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Consultant, CMAR and Project Manager).
- 3.

PROJECT #: W9903 & W4708

DATE:

PROJECT NAME: Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects

GMP Summary			AMOUNT
A	Sub-Contractors Cost of Work (Labor, Materials, Equipment, Warranty)		\$
B1	Project Requirements (Allowance)		\$
B2	CMAR Construction Fee	%	\$
C	CMAR Cost of Work (Labor, Materials, Equipment, Warranty, Profit)		\$
D	Total Cost of Work		\$
INDIRECT COSTS			RATE
E	General Conditions (Allowance)	%	\$
F1	Payment and Performance Bond	%	\$
F2	Insurance	%	\$
G	Sales Taxes	5.17%	\$
H	CMAR INDIRECT COST		\$
I	PROJECT CONTINGENCY		\$
J	TOTAL GMP		\$

GMP Formulas:

Total Cost of Work: $A+B1+B2+C = D$ CMAR Indirect Cost: $E+F1+F2+G = H$ Total GMP: $D+H+I = J$

- D. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CMAR, Design Consultant, and Project Manager using the format below.

Plans Used for Preparation of GMP No.	
CMAR	Date
Design Consultant	Date
Project Manager	Date

9630631v2

PROJECT NAME: Site 71 Well and Booster Pump Station & Water Booster Pump Station 42B Projects

PROJECT NO: W9903 & W4708

9630631 CMAR Des (Rev. Jan 2013)